Quarterly Report

OF THE

ATTORNEY GENERAL

OF

ALABAMA

FOR THE PERIOD

FROM APRIL 1, 1978
THROUGH JUNE 30, 1978

WILLIAM J. BAXLEY, Attorney General

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QUARTERLY REPORT

of the

ATTORNEY GENERAL

of

ALABAMA

For the Period

From April 1, 1978

Through June 30, 1978

TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from April 1, 1978 through June 30, 1978, is published in compliance with the provisions of Title 55, Section 228 Code of Alabama, 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State, and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy district attorney of his county. The section also requires that I send a copy of this report to each district attorney and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, County, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

WILLIAM J. BAXLEY

Attorney General

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April 3, 1978

Honorable Jerry Popwell
Chief Deputy
Lee County Sheriff's Department
Lee County Courthouse
Opelika, Alabama 36801

Competitive Bid Law—Sheriff

State bid contracts may be utilized by counties without further bidding if the purchase is made from the vendor to whom the State has awarded the contract.

Opinion by Assistant Attorney General Lawley.

Dear Sir:

This letter is in response to your letter of recent date which asks whether your department may utilize a State contract for the purchase of tires to be used by patrol vehicles in high speed driving. Your question is answered in the affirmative.

Contracts made for the benefit of counties by the State Finance Department may be utilized by counties without further bidding. However, if a county chooses to utilize a State bid contract, the purchase must be made from the vendor to whom the State has awarded the contract. See opinion of the Attorney General dated June 23, 1975 to Honorable John Hollis Jackson, Jr., Chilton County Attorney, a copy of which is enclosed for your convenience.

It is my understanding that the Lee County contract for tires does not include tires needed for high speed driving by patrol vehicles. Therefore, if the sheriff's department chooses to purchase these tires, you may either utilize the State contract or the Lee County Commission may request competitive bids for this type of tires.

If I may be of any further assistance to you in this matter, please let me know.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

April 12, 1978

Mr. William W. Dillard, Jr.
Chief Examiner
State of Alabama
Department of Examiners of Public Accounts
Montgomery, Alabama 36130

Conflicts of Interest—Officers and Offices—Funds

Deposit of public funds in banks with which public officials are associated discussed.

Opinion by Assistant Attorney General Stephens.

Dear Mr. Dillard:

Your request for an opinion states that there is confusion and disagreement throughout the state as to whether an agency can legally deposit its funds in a bank in which a member of the agency's controlling board is also an officer or stockholder. Your letter states that the confusion stems from the apparent conflict between an Attorney General's opinion to Wade H. Baxley, Esq., of April 25, 1974, and Advisory Opinion No. 139 of the State Ethics Commission.

At the outset let me state that there is no conflict between the opinion to Mr. Baxley and the Advisory Opinion of the State Ethics Commission. The Ethics Commission Advisory Opinion addresses itself only to the Ethics Act; the opinion to Mr. Baxley addresses itself to Code of Alabama 1975, §41-16-60. The Ethics Act and §41-16-60 of the Code of Alabama are entirely separate and independent provisions of law. A violation of the Ethics Act is a felony; a violation of §41-16-60 is a misdemeanor. There are also many other provisions of law located throughout the Code of Alabama which prohibit or restrict certain actions by public officials.

The first specific question you pose is as follows:

> "1. In the instance of a member of a municipal or county board, might the individual be subject to criticism for violating Title 55, Section 508, [§41-16-60] even though the Ethics Commission determines that the 'Ethics Act' has not been violated?"

It should be obvious from the above discussion that the answer to this question is yes. Just because an action does not violate the Ethics Act does not mean that it is legal. The applicable provision of the Ethics Act only prohibits a person from using his position to obtain financial gain for himself and would not be violated if the individual recused himself from acting on the decision to deposit public funds in his bank. On the other hand, §41-16-60 is a flat prohibition against a public official being financially interested in a contract with the public body with which he is associated and whether the public official recused himself from the public body's action with respect to such contract is irrelevant. Under this section, a public official should be considered to be financially interested in the deposit of public funds with any bank of which he is an officer or employee or of which he is a member of the Board of Directors or is a substantial stockholder. As a general rule public board funds should not be deposited in any bank in which a member of the board owns ten percent or more of the bank's stock or in which the total shares owned by board members is fifteen percent or more.

Your second question is as follows:

"2. Are county hospital board members subject to the Baxley opinion in view of their unique standing under the competitive bid law (including Title 55, Section 508, supra [§41-16-60]) as enunciated in an Attorney General's opinion dated December 15, 1971 to Honorable Thomas Reuben Bell, Attorney at Law, a copy of which is enclosed for your convenience.

The answer to this question is also yes. The opinion to Mr. Bell is inapplicable. §41-16-60 makes no exception for county hospital boards.

Your third question is as follows:

"3. It is my understanding that more than one member of the State Board of Education is an officer or stockholder in a bank. Does the conclusion reached in your opinion to Mr. Wade Baxley apply to contractual agreements between state trade schools and junior colleges under control of the State Board of Education and banks where Board members are officers or stockholders?"

The answer to this question is no. Section 41-16-60, by its terms, does not apply to members of the State Board of Education.

Your fourth and final question is as follows:

"4. It is also my understanding that members of several boards of trustees of the state universities are officers or stockholders of various banks. Since state universities having separate boards are exempt from Section 508 [§41-16-60], is there any other statute such as the state competitive bid law which would prohibit contractual agreements of this type?"

Code of Alabama, §36-10-14 prohibits any public officer from being "beneficially interested, directly or indirectly, in any contract, sale, lease, or purchase which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his office" and also prohibits any public official from employing or using any money "under his official control or direction, or in his official custody, for the private benefit or gain of himself or another." This provision of law applies to members of the boards of trustees of state universities.

I hope and trust that this sufficiently answers your question.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

April 12, 1978

Mr. Stephen T. Etheredge
Attorney at Law
Lee & McInish
P. O. Box 1665
Dothan, Alabama 36302

Mental Health—Public Records

Mental Health Board, incorporated under Act 310, 1967 Acts is a public corporation and employee lists and salary schedules are subject to public inspection.

Opinion by Assistant Attorney General Ralph.

Dear Mr. Etheredge:

You have asked for an opinion on behalf of the Wiregrass Mental Health Board, Inc., and Herman Culpepper, the Director, on ". . . the applicability of the Freedom of Information Act to the Wiregrass Mental Health Board, Inc." Your specific question is "whether the Wiregrass Mental Health Board, Inc. must provide the Dothan Eagle, a local newspaper, with the names of employees and their individual salaries[?]"

Title 5, Section 552, U.S.C.A. popularly known as the "Freedom of Information Act" is primarily concerned with the several federal agencies making certain information public and available, and does not have applicability to the question presented.

To properly address your question, reference must be made to the legal structure of the Wiregrass Mental Health Board, Inc. The Wiregrass Mental Health Board is incorporated under the provisions of **Code of Alabama 1975,** Section 22-51-1 through 22-51-14 generally referred to as an Act "310" corporation. (Act 310, General Acts 1967, Page 853, approved September 5, 1967). Incorporation under the provisions of "Act 310" constitutes the Wiregrass Mental Health Board as a public corporation. Being a public corporation, the employees of the board are public officers or servants and are required to keep public books, documents and files pertaining to the business affairs or transactions of their office. See generally **Code of Alabama 1975,** Section 36-12-1 through 36-12-4. **Code of Alabama 1975,** Section 36-12-40 provides:

> "Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute."

This of course does not imply that the personal case records and files of clients served by the board or personnel files on individual employees would be considered public writings. Such records would contain information not considered public and which would be of a confidential

nature. The disclosure of such information could be considered an invasion of personal privacy.

By way of analogy the State Personnel Department is required to maintain employee and salary schedules for all employees in the state merit system. **Code of Alabama 1975,** Section 36-26-1 et seq. Additionally, **Code of Alabama 1975,** Section 36-26-8 (14) requires that employee lists for all Departments coming under the merit system law shall be published in one daily newspaper of the state each year. Section 36-26-44 provides for the inspection of the records of the State Personnel Department except for such records as may be required to be held confidential by reason of public policy. Salary records of public employees are not considered confidential and, while not open to idle curiosity, are available for legitimate inspection. (See rules of State Personnel Board State of Alabama approved February 12, 1974.) Further, **Code of Alabama 1975,** Section 36-6-9 requires that a journal of the salaries or compensation payable by or through the Executive, Legislative and the Judicial Departments be prepared for each position, (including supplemental salaries or compensation from any county, municipality or other entity) and that such journals of compensation be filed with the probate judges and shall be open to public inspection.

It is, therefore, my considered opinion, based on the above and foregoing that the question should be answered in the affirmative and that the Wiregrass Mental Health Board, Inc., should consider as public information the requested list of its employees and their individual salaries.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

May 3, 1978

Honorable Fred Huggins
Probate Judge
Clarke County Courthouse
Grove Hill, Alabama 36451

CIRCUIT CLERKS—ABSENTEE BALLOTS—ADDITIONAL COMPENSATION

Circuit Clerks who handle absentee ballots pursuant to Code of Ala. 1975, §17-10-1, et seq., are entitled to the compensation provided for thereunder. Code of Ala. 1975, §17-10-14.

Opinion by Assistant Attorney General Ward.

Dear Judge Huggins:

This office is in receipt of your letter of October 7, 1977 in which you requested an opinion concerning the following question:

> "On behalf of the Clarke County Commission. I respectfully request your opinion as to whether any additional compensation should be paid to the Circuit Clerk for duties performed under Title 17, Section 17-10-14, Code of Alabama 1975, following its effective date?"

The answer to your question is that circuit clerks are entitled to the additional compensation for duties performed under Code of Ala. 1975, §17-10-14.

In answering your inquiry, we must study two separate sets of laws. First, we consider the laws dealing with the handling of absentee ballots. Prior to Act 1147 of the 1975 Alabama Legislature, now codified as Code of Ala. 1975, §17-10-1, **et seq.,** only registers in chancery handled the duties and functions relating to absentee ballots. Title 17, §64(15), et seq., Code of Alabama 1940 (Recomp. 1958). Circuit clerks were excluded from participation in this process, even when the register was a candidate for office. **Kendrick v. Boyd,** 255 Ala. 422, 51 So.2d 701 (1951). These statutes were repealed by Act No. 1147, supra.

With the passage of Code of Ala. 1975, §17-10-1, **et seq.** (Act No. 1147), circuit clerks, for the first time, were given the duty and responsibility, alternatively with the register, of handling absentee ballots. See e.g. Code of Ala. 1975, §17-10-2, §17-10-4, §17-10-5, etc. The provisions of the new absentee law specifically provided that either the clerk or register could perform the duties outlined therein. Code of Ala. 1975, §17-10-1, **et seq.** Because of this new law, and for the first time, circuit clerks were given a new duty, something completely foreign to their everyday duties relating to the judiciary. This situation is quite unlike the registers who traditionally, as part of their duties, handled the absentee balloting procedure. As a matter of fact, the fees for handling absentee ballots were included in the computation of the registers' annual salary under Act No. 1205. Consequently, this office has opined that Code of Ala. 1975, §17-10-1 does not allow registers to receive additional compensation for handling absentee ballots. (See opinion to Maury Friedlander, Mobile County Attorney, April 18, 1977).

As you mention in your letter, Code of Ala. 1975, §12-17-92 provides that all circuit clerks shall be compensated by the State at a salary provided for by law. Although this provision clearly provides that circuit clerks shall be paid by the State, and although it further contemplates uniform compensation for all circuit clerks, it does not preclude the clerks from receiving additional compensation for the handling of absentee ballots as provided in Code of Ala. 1975, §17-10-1, **et seq.**

First of all, the duties regarding absentee ballots to be performed by circuit clerks are new. As explained, the circuit clerks, unlike the registers, were not responsible for performing these duties until 1975 when Act No. 1147 was passed. Therefore, the computation for the clerk's annual salary, pursuant to Act No. 1205, supra, unlike the registers, did not include or provide for the handling of absentee ballots.

Moreover, the fact Act No. 1205 provides for a uniform annual salary payable to the clerks by the State for the performance of all their duties, does not preclude the additional compensation provided in Code of Ala. 1975, §17-10-1, **et seq.** Act No. 1205, as this relates to circuit clerks, concerns itself with duties relating to the courts and the judiciary. Clerk's duties under Act 1205 pertain to and involve primarily activities relating to the orderly process of the legal system, e.g. keeping dockets and records of lawsuits, issuing subpoenas, keeping custody of records, etc. See Code of Ala. 1975, 12-17-94.

However, duties relating to the handling of absentee ballots are foreign to the normal and usual duties of the clerks and were, in my opinion, not contemplated in determining the clerks' regular duties and consequently the annual salary under Act No. 1205. This is expressed in Act No. 1205 itself. Although that Act expressly repealed certain provisions of old Title 11, Code of Alabama 1940 (Recomp. 1958) allowing circuit clerks various fees, ostensibly because their salary was to be uniformly set under Act No. 1205, no express repeal was made of the provisions contained in Code of Ala. 1975, §17-10-1, et seq. (Act No. 1147). As a matter of fact, Act No. 1147 was passed and approved the same day Act No. 1205 was. This clearly shows an intent to allow to circuit clerks this additional compensation and a corresponding intent for their annual salary not to include this additional compensation.

A similar situation presented itself in **Kendrick v. Boyd,** 35 Ala. App. 592, 51 So. 2d 697, aff'd **Kendrick v. Boyd,** 255 Ala. 422, 51 So.2d 701. There the register in chancery had a fixed annual salary provided by law. Subsequent to the law establishing that salary, the Legislature passed Title 17, §64(15), et seq., Code of Alabama 1940 (Recomp. 1958). That law, as explained, provided additional compensation to registers for handling absentee ballots. The register in Jefferson County applied for this additional compensation for handling absentee ballots. The Jefferson County Commission refused payment because the register's compensation was fixed by law on a salary basis, and therefore he would not be entitled to extra pay for his services regarding absentee ballots.

The Court of Appeals disagreed and held that the register was entitled to the additional compensation. **Kendrick v. Boyd,** 35 Ala. App. 592, 51 So. 2d 697 (1951). That Court held when the Legislature passed Title 17, §64(15), supra, it had in mind the existence of laws relating to salary compensation for the register in Jefferson County.

The Court reasoned that the Legislature could have provided exception for the pay of the Jefferson County register in passing Title 17, §65(14, supra. It did not. Instead, the Legislature by the passing of Title 17, §65(14), supra, imposed on the offices additional duties foreign to those of his office. **Kendrick v. Boyd,** supra, 35 Ala. App. 592, at p. 596. As the Court stated:

> "We think the answer to the instant question is that the Legislature may award a salaried public official extra compensation by imposing on the incumbent new and additional duties which are foreign to his office."

Kendrick v. Boyd, supra, 35 Ala. App. 592, at p. 596.

The Alabama Supreme Court agreed with the Court of Appeals and stated:

> "The duties required of the register under the provisions of Act 424 (Title 17, §65(14)), supra, are entirely foreign to any official act or the performance of any service connected directly or indirectly with the office of Register of Jefferson County. The equity court, which the register serves, is in no wise connected with the manner in which elections are conducted."

Kendrick v. Boyd, 255 Ala. 422, 51 So. 2d 701 (1951)

Here the Legislature in passing Act No. 1147 created a new duty on an incumbent, heretofore foreign to his office. When the Legislature passed Act 1147, they were, of course, aware of 1205 and could have expressly provided an exception so clerks could not receive the additional compensation, if they were so inclined. The fact they passed Act No. 1147 the same day they set a uniform salary for clerks shows, in my opinion, an intent to authorize to clerks the additional compensation for handling absentee ballots.

This opinion should in no way be read to overrule the May 3, 1977 opinion of this office to Billy D. Harbin. Rather, the instant opinion because of the peculiar and extraordinary facts presented, modifies that earlier opinion only in regard to the fee in question, i.e. absentee ballot fees.

I trust this satisfactorily answers your question. If not, please do not hesitate to let me know.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

Class II property at 25% and Class III property at 15% of fair market value.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

May 26, 1978

Richard Mace
Chairman, Board of School Trustees
Riverchase Middle School
1755 Wooddale Circle
Pelham, Alabama 35124

County Boards of Education—Board of School Trustees of New School—Authority to Refuse to accept assignment of teachers.

Opinion by Assistant Attorney General Hamlett.

Dear Mr. Mace:

We have your letter of May 20, 1978 in which you as chairman of the Board of School Trustees of Riverchase Middle School, along with the two other trustees of that school, request the opinion of this office regarding the following matters:

"1. Riverchase Middle School is a new school and no teachers have ever been employed in the school. Will any and all teachers subsequently assigned to the school by the Shelby County Superintendent of Education come within the perview of Section 16-10-4, Code of Alabama 1975 and thereby be subject to our refusal to accept assignment of any teacher to our school as provided therein?

2. Riverchase Middle School will be a new school with students drawn from the sixth, seventh and eighth grades of an existing elementary and high school in our community. Given this fact, are the teachers presently employed for these grades at the existing elementary and high school 'already employed' in our school so as to exempt them from the process of our refusal to accept their assignment as provided in Section 16-10-4 Code of Alabama 1975?

3. Does Section 16-10-4 Code of Alabama 1975 mandate that the County Superintendent of Education give written notice of the assignment of each teacher to the Board of Trustees of a school and provide that thereafter the Board of Trustees has ten (10) days in which to refuse to accept the assignment of any such teacher?

4. May the Board of Trustees refuse to accept any teacher assigned to their school if they have not been furnished written notice of that teacher's assignment by the Superintendent?

5. Upon refusal of the Board of Trustees to accept the assignment of any teacher, must the County Superintendent of Education assign another acceptable teacher to the school in place of the one refused?

6. Are teachers who have attained continuing service status (tenured) and those who have not attained such status (non-tenured) subject to the Board of Trustees' refusal of their assignment to the school as provided in Section 16-10-4 Code of Alabama 1975?

7. Is the fact that a Board of School Trustees refuses to accept a teacher assigned to their school a 'good and just cause' for cancellation of the employment contract with a teacher as provided in Section 16-24-8 Code of Alabama 1975?"

Our response to your first question is in the affirmative. It is our opinion that since Riverchase is a new school, all teachers assigned to said school come within the purview of Section 16-10-4 **Code of Alabama 1975.** Such teachers are therefore subject to the refusal of the Board of School Trustees to accept the assignment of such teachers ". . . upon written notification to the county superintendent of education setting out the reason for such refusal. . . ." Section 16-10-4, **supra.** Further such notice of refusal to the superintendent must come within ten days of the receipt by the Board of School Trustees of the notice of assignment of teachers by the superintendent.

Your second question is answered in the negative. Although Riverchase is to encompass the sixth, seventh and eighth grades of an existing elementary and high school, it is still a new school with a new administration and new patrons and trustees. These trustees, like those of any other school may under Section 16-10-4, **supra,** refuse to accept the assignment of any teacher to the new school.

Your third question is answered in the affirmative.

Your fourth question is answered in the negative. The Board of School Trustees may not refuse to accept the assignment of a teacher unless such Board is notified in writing by the county superintendent that the assignment has been made. Of course, Section 16-10-4, **supra,** requires the superintendent to give such notice and if he refuses to do so, then legal action could be taken against him.

Your fifth question is answered in the affirmative.

Your sixth question is answered in the affirmative. All teachers, tenured and non-tenured, assigned to a new school are subject to the provisions of Section 16-10-4, **supra.**

May 23, 1978

Ms. Charlotte M. Lowery
Clerk, Town of Sumiton
Sumiton, Alabama 35148

Utility Boards—Employers and Employees.

Water Works Board cannot grant its employees retroactive pay increase.

Opinion by Assistant Attorney General Knight.

Dear Ms. Lowery:

The Attorney General received your request for an opinion from this office as to the following matter:

> Does the Water Works Board of Directors fall under the ruling of Section 68 of the Constitution which prohibits the Council from increasing the compensation of employees retroactive to a date beyond the first day of the pay period for which compensation will later be due?

Your question is to be answered in the affirmative.

Section 68 of the **Constitution of Alabama 1901** reads:

> The legislature shall have no power to grant or to authorize or require any county or municipal authority to grant, nor shall any county or municipal authority have power to grant any extra compensation fee, or allowance to any public officer, servant, or employee, agent or contractor, after service shall have been rendered or contract made, nor to increase or decrease the fees and compensation of such officers during their terms of office. . . .

It is the opinion of this office that the Water Works Board of a city is a municipal authority and would come under the provisions of Section 68. Therefore, the Water Works Board of the Town of Sumiton may not grant its employees retroactive pay increases beyond the first day of the pay period for which compensation is due.

If our office can be of further assistance, please do not hesitate to contact us.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

May 25, 1978

Mr. Charles E. Howard
Tax Collector

Mr. Porter Lee Hanes
Tax Assessor
Morgan County Courthouse
P. O. Box 696
Decatur, Alabama 35602

AD VALOREM—COUNTIES—CONSTITUTION

The final subsection of Code of Alabama 1975, §40-8-1, was held unconstitutional by the United States District Court, Southern District of Alabama, in Violet Mary McCarthy, et al. v. Robert G. Jones, et al., Civil Action No. 77-242-H, and is void **ab initio.** Ad valorem taxes must be assessed and collected on the basis of Code of Alabama 1975, §40-8-1(a) through (d).

Opinion by Assistant Attorney General Davis.

Dear Sirs:

In your letter of May 5, 1978, you request an opinion of this office respecting these questions:

1. Does the decision of the Court in Violet Mary McCarthy, et al. v. Robert G. Jones, et al., Civil Action No. 77-242-H, rendered on April 21, 1978, require assessment of all Class II property at 25% of fair market value and all Class III property at 15% of fair market value?

2. Did these changes have to be made for the assessment and collection of 1978 taxes?

The answer to each of these questions is affirmative.

The Court in the Violet Mary McCarthy case, supra, held that the last subsection of Code of Alabama 1975, §40-8-1, was unconstitutional, being repugnant to the Fourteenth Amendment to the United States Constitution in that it provided for variations in assessment ratios in different counties based on nothing other than geographical location, there being no rational pattern or basis for such variation. Since the statute itself and not merely the manner of its enforcement was held to be unconstitutional, subsection (5) or (e) is void **ab initio** and cannot be relied upon for any tax year. **Norewood v. Goldsmith,** 168 Ala. 224, 53 So. 84, see also 16 C.J.S. 474 ff. Hence, 1978 taxes must be assessed and collected on the basis of Code of Alabama 1975, §40-8-1(a) through §40-8-1(d), which provide for assessment of all

In response to your seventh question, it is the opinion of this office that the fact that the board of school trustees refuses to accept the assignment of a tenured teacher to their school is not, in and of itself "good and just cause" for cancellation of the employment contract with that teacher as provided in Section 16-24-8, **Code of Alabama 1975.** However, upon such refusal, it is incumbent upon the County Superintendent to assign a different teacher to the school in question. Any decisions made with regard to the refused teacher must then be made by the County Superintendent and County Board of Education.

I trust that we have answered your questions sufficiently and that if we can be of further service to you, you will not hesitate to call upon us.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

May 26, 1978

Mr. Jack Beasley
Chairman
USS ALABAMA Battleship Commission
P.O. Box 65
Mobile, Alabama 36601

Battleship Commission

Commission members cannot be polled by telephone to obtain votes to make decision on matter at hand. Alternatives discussed.

Opinion by Assistant Attorney General Knight.

Dear Mr. Beasley:

The Attorney General received your request for an opinion from this office as to whether it would be permissible under the laws of this State to poll by telephone those members of the USS ALABAMA Battleship Commission who are not present at a meeting in order that there might be sufficient votes to make a decision on the matter at hand.

In your letter you stated that there were occasions when the Commission meets and a quorum is not present so that action can be taken on urgent matters.

Although polling members of a board or commission by telephone is not specifically forbidden by the laws of this State, it is the opinion of the Attorney General that it is prohibited by implication in the lack of expressed permission to do so and that there are better alter-

natives to enable the Commission to transact business when a quorum of the members cannot be attained.

Code of Alabama 1975, Section 41-9-342 gives the Commission members the authority to determine and establish its own organization and procedure.

One possible method of transacting the necessary business of the Commission in the alternative to a meeting where a quorum cannot be attained is to create an executive committee with the power to take such actions as it deems necessary as permitted by **Code of Alabama 1975,** Section 41-9-344. According to this Section, the Committee may have those powers deemed necessary by the Commission except it may not issue bonds or enter into a contract or lease for longer than a year and cannot execute a contract for more than $10,000.

The other possible alternatives is to get the written consent of the members to take the necessary action on a matter.

Section 41-9-346, supra, states that the Battleship Commission is a public body corporate and gives it all powers necessary to effect the purposes for which it was established. Thus, the Commission is very much like a non-profit corporation. **Code of Alabama 1975,** Section 10-3-8 permits action to be taken by the members or directors of a non-profit corporation without a meeting if a consent in writing to take the action is signed by all of the members or directors as the case may be. If the members of the Commission approved it, this same procedure may be used by the Commission.

Again, it is the opinion of the Attorney General that the above-discussed alternatives to polling by telephone are more feasible and valid ways of obtaining votes on action needed to be taken by the Commission when a quorum cannot be gathered for a meeting.

If our office can be of further assistance, please do not hesitate to contact us.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

June 2, 1978

Hon. Walker Hobbie, Jr.
Judge of Probate
Montgomery County
P. O. Box 223
Montgomery, Alabama 36101

FILING TAX—DEEDS

General discussion of whether deed tax is due in the case of deeds of liquidation, deeds of gift, trust deeds,

partition deeds and other forms of conveyance for which there is no consideration either actual or recited; and if so, what is the measure of such tax.

Opinion by Assistant Attorney General Loeb.

Dear Judge Hobbie:

Reference is made to your letter of March 31, 1978, in which you request the opinion of this office based on information contained in a letter from Ball, Ball, Duke and Matthews. This letter, in pertinent part, reads as follows:

> "We have recently been advised by your office that deed tax will now be assessed on all transfers of real estate based on the value of the real property less any existing mortgages, rather than on the consideration passing from Grantee to Grantor.
>
> I would appreciate it if you would request an immediate Attorney General's opinion on this matter. An enormous amount of transfers are made on real property which involve no consideration to the Grantor. The typical transfers are as follows:
>
> A. A Corporation having legal title to real property is liquidated and, under the laws of liquidation, each stockholder is deeded an undivided interest in the lands of the corporation. No consideration passes from the stockholders "to the corporation at the time of the deed, since they are merely getting their stockownership out in the form of undivided interest in land.
>
> B. A man makes a gift of land to his family. No consideration passes to the Grantor.
>
> C. A person executes a Revocable Trust, including, in its assets, real estate. The nature of a Revocable Trust is such that:
>
> i. The Grantor gets the income on the property for his life.
>
> ii. The grantor has the right, at anytime, to demand return of the property and the Trustee must immediately reconvey.
>
> The Grantor of the Revocable Trust has not truly parted with title to the property since he can get it back at any time. If the transfer were taxed for value, then, in that event, no Revocable Trust could ever be used because it would cost the Grantor .1% when he conveys out to the Trustee and another .1% when he demands return of the property from the Trustee.
>
> D. A will provides for title to real property to be placed in a trust. This can involve two transfers also without any consideration:

i. A deed from the Executor to the Trustee.

ii. A deed from the Trustee to the beneficiaries upon termination of the trust.

E. Conveyances by an individual to his corporation as capital contribution to the corporation. In this event, tax is placed against the corporation based upon the contribution to capital shown in the Certificate of Incorporation. If the transfer into the Corporation was also taxed upon value, the same transfer would be twice taxed.

F. Deeds In Partitions. In this case, joint owners of property petition the Circuit Court for partition of the land into parcels equal to their undivided ownership. By Court decree the property is deeded, in separate parcels, to the joint owners and the deeds are recorded. No consideration passes as part of the transaction, since all each Grantee is getting is sole ownership in a smaller parcel rather than an undivided percentage interest in a larger parcel.

G. Numerous other conveyances that are made by operation of law or Court decree and in which no consideration passes from Grantee to Grantor.

Before answering the specific questions presented in paragraphs A through G, it should be stated that if deed tax is due in any instance, it should be based on the value of the interest conveyed, not necessarily the consideration recited in the instrument. This principle was enunciated most clearly in Biennial Report of the Attorney General, 1926-28, p. 680, where it was held, in the case of a deed from a husband to his wife:

> "The tax is not based upon the recited consideration, but upon the value of the property conveyed. A million dollars worth of property can legally be conveyed for the consideration of love and affection, but the filing tax on such deed of conveyance would be based on the million dollar value."

This holding is supported by Biennial Report of the Attorney General, 1928-30, p. 210; Biennial Report of the Attorney General, 1930-32, p. 801, p. 922, p. 1047; Quarterly Reports of the Attorney General, Vol. 1, p. 66; Vol. 7, p. 243, Vol. 14, p. 183; Vol. 19, p. 181; Vol. 55, pp. 54, 146; Vol. 90, p. 28; and others. These opinions also affirm the principle that deed tax should be collected only on that portion of the value in excess of any mortgage which has been recorded and on which mortgage tax has been paid.

Turning to the specific questions asked, the answer to paragraph "A" is that if legal title to individual parcels of property is conveyed by a liquidated corporation to its stockholders, no consideration being recited in the deed, and said deeds are offered for record, tax should be collected on each deed measured by the value of the particular interest being conveyed.

In paragraph "B", a man makes a gift of land to his family, no consideration passing to the grantor. Here again, tax must be collected based upon the value of the land being conveyed. It must be emphasized that deed tax is levied upon the privilege of recordation, not upon the property itself. It is measured by the fair market value of the property, not the consideration, either recited or otherwise, although in many instances the consideration passing from grantee to grantor will help determine fair market value.

The answer to paragraph "C" (concerning revocable trusts) is that deed tax is due both times — when the property is conveyed to the trustee and also when the property is conveyed back to the grantor-beneficiary.

In paragraph "D", assuming that only real estate is involved and that testator devised the property directly to the trust or trustees without any need for interception of title by the execuor, a deed from the executor to the trustee should be treated as a deed for nominal consideration, and no tax is due. See Quarterly Reports of Attorney General, Vol. 22, p. 153; Vol. III, p. 68. The subsequent deed from the trustee to the beneficiary is subject to deed tax. Quarterly Reports of the Attorney General, Vol. 1, p. 117; Vol. 47, p. 169.

Paragraph "E" is answered affirmatively that tax is due on the full value of property conveyed by a person to the corporation of which he is a part. It takes a conveyance to place legal title in the corporation, and for the privilege of recordation, for perfecting the record of the transaction, tax is due. See **Hawkins v. Pure Oil Co.,** 232 Ala. 660, 169 So. 307.

Paragraph "F" raises the question of whether partition deeds executed by joint tenants pursuant to Circuit Court decree are subject to deed tax. The answer is yes, they are subject to tax unless the proviso contained in **Code of Alabama 1975,** §40-22-1 is applicable. As stated in Biennial Report of the Attorney General, 1926-28, p. 42:

> "Where one tenant in common conveys his interest in a particularly described piece of land to another tenant in common the value of the interest conveyed is the measure of the filing tax."
>
> "Specifically, your inquiry is as to the amount of the deed filing tax collectible on the two conveyances between "A" and "B", who are joint owners or tenants in common of 80 acres of land of the value of $40.00 per acre, whereby each conveys to the other his undivided one-half interest in one of the two 40s, so that each becomes the owner of the fee of one of the parcels. In my opinion, the principle of the former opinion of this office, cited supra, governs, and the deed filing tax should be collected on each deed, according to the value of the property or interest therein conveyed."

Also in Quarterly Report of the Attorney General, Vol. 14, p. 182:

> "In my opinion, if the deeds executed by the joint owners, each to the other, to the tracts of land which theretofore had been partitioned by the decree of court, the record filing tax accrues on the value of the interest in the real estate, which the deeds purport to convey."

Thus it is apparent that the measure of the tax is the value of the interest being conveyed by each deed, and not the consideration recited or expressed therein. See also Quarterly Report of the Attorney General, Vol. 1, p. 31; Vol. 16, p. 218; Vol. 27, p. 10.

As to the numerous other conveyances referred to in paragraph "G" made by operation of law or Court decree in which no consideration passes, tax is, in most instances, due based on the value of the interest being conveyed, not upon the consideration recited therein or actually changing hands.

As stated in the **Pure Oil** case, supra:

> "Petitioner presents no such case. It has, according to its own contention, the perfect legal title to all of the property of the Wofford Oil Company of every character and description. This title needs no perfection. The plain purpose of its recordation, therefore, is not for perfection of the title to real estate, as the exception reads, but the perfection of the record of the transaction. But for that privilege the statute exacts a tax, and the exception was not incorporated in the statute for the purpose of enabling one who has the legal title to thus gain the advantage of its recordation without payment."

From this language, it is apparent that a merger agreement or Court decree which either vests title or some interest in property in the grantee or is the best evidence or memorial of such vestment is subject to tax if recorded. It perfects the record of the transaction and gives notice to all that title, or some interest, has changed hands.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

June 15, 1978

Honorable W. Forrest Killough, Probate Judge
Talladega County Courthouse
P. O. Box 755
Talladega, Alabama 35160

MOBILE HOMES—LICENSES AND PERMITS—PENALTIES

Act No. 628, **Acts of Alabama,** Regular Session 1977, requires purchasers of mobile homes in Talladega County to pay an annual registration fee of $3.00 within four days of purchase, and the penalties for non-compliance are due at the same times as delinquent motor vehicle licenses.

Opinion by Assistant Attorney General Breckenridge.

Dear Judge Killough:

This is to acknowledge receipt of your letter dated February 15, 1978, in which you requested an opinion from the Attorney General as follows:

"Dear Attorney General Baxley:

We need an opinion on the following:

Is a mobile home owner subject to penalty of $30.00 if the mobile home has been purchased more than the four day period allowed by law, but has not occupied the trailer?

Would appreciate an opinion on this as soon as possible as there is some confusion on this as to whether it is to be handled just the same as other motor vehicles in determining penalties due.

Thanking you in advance, I remain,

Yours truly,

W. FORREST KILLOUGH
Judge of Probate."

After a careful reading of your letter, and a telephone conversation with your office, it is now apparent that the penalty you refer to in your request is imposed by Act No. 628, **Acts of Alabama,** Regular Session 1977. Act No. 628 is a general law of local application which applies solely to counties having a population of "not less than 60,000 nor more than 68,000 inhabitants according to the 1970 or any subsequent federal decennial census". It is my opinion that the registration and identification fee that is charged by Act No. 628 is imposed on mobile homes solely as to the aspect of the mobile home constituting a motor vehicle, and was not meant to be imposed as an ad valorem tax on the mobile home as such. Adequate authority for this position can be found in Section 2 of Act No. 628 which states:

"Every person, firm, or corporation who owns, maintains, or keeps in such counties a mobile home, except a mobile home which constitutes a part of his stock as a dealer **and except a mobile home which has been assessed for ad valorem taxation as a part of the realty,** shall pay an annual registration fee of three dollars ($3.00)." (Emphasis supplied)

As can be seen from the underlined portion of the above quoted

statute, those mobile homes which have been assessed for ad valorem taxes as a part of the realty, are excepted from the provisions of Act No. 628. Therefore, it is my opinion that the penalties for failure on the part of the "owner of any mobile home who fails to pay the registration fee" as provided for in Section 3 of Act No. 628 would be payable and delinquent at the same times motor vehicle licenses are due, payable, and delinquent. Your attention is again directed to Section 2 of Act No. 628 which imposes certain penalties and provides:

> "Such fee shall be paid to the judge of probate in such counties, **and shall be due, payable, and delinquent at the same time that motor vehicle licenses are due, payable and delinquent.**" (Emphasis supplied)

Since the provisions of the **Code of Alabama** 1975, §40-12-242 require, "the purchaser of any motor vehicle requiring a tag to procure the required tag four days from the date of acquisition", it is my opinion that the purchaser of a mobile home in Talladega County would be required to procure the registration and identification decal provided for in Act No. 628, **Acts of Alabama,** Regular Session 1977, within four days of the acquisition of the mobile home.

As stated above, Act No. 628 is a general law of local application based on population classification. Recently the Supreme Court of Alabama, in the case of **Peddycoart v. City of Birmingham,** ..... **Ala.** ....., 354 So.2d 808, ruled that in the future a population classification cannot be utilized to avoid a statute being classified as a local act, subject to all of the constitutional qualifications applicable to it. The Supreme Court stated in **Peddycoart** that its ruling would apply only to statutes adopted in the future, and would not be retroactive. However, as an additional point of information for your consideration, the Supreme Court of Alabama enunciated a three-prong test that must be met by present general laws of local application based on population in order to avoid being ruled unconstitutional. The three-prong test announced by the Supreme Court in **Peddycoart** is:

> (1) The population classification contained in the statute must be reasonably related to the purpose of the statute.
>
> (2) The statute must not violate the equal protection principal of both the United States Constitution and the Alabama Constitution.
>
> (3) The local needs attempted to be addressed by the statute must not have already been provided for by a general law.

What this means, is that if Act No. 628 cannot pass the **Peddycoart** three-prong test, then the act may be subject to an attack on its constitutionality.

I believe I have fully answered the questions contained in your letter, and if I can be of any further service to you in this matter,

please do not hesitate to let me know.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

June 16, 1978

Honorable Arnold Teks
City Attorney
City of Florence
P. O. Box 98
Florence, Alabama 35630

Public Contracts—Competitive Bid Law

The purchase by a municipality of used equipment is subject to the competitive bid law.

Opinion by Assistant Attorney General Smith.

Dear Mr. Teks:

This office is in receipt of your opinion request which presents the following factual situation:

> "The City of Florence has had installed for some time a xerox 4000 copier which has been paid for on a rental contract basis.
> "The City has the opportunity to purchase this used equipment at a very advantageous price."

You ask if such a purchase would violate the provisions of the competitive bid law. Your question is to be answered in the affirmative.

The foregoing factual situation does not indicate that a lease-purchase agreement was made. Therefore, the transaction should be treated as simply a purchase of used equipment.

Code of Alabama 1975, §41-16-50 provides that all expenditures of funds of whatever nature for the purchase of equipment involving $2,000.00 or more made by the governing bodies of municipalities of the state shall be made by contractual agreement entered into by free and open competitive bidding. This office has ruled in opinions dated August 21, 1972 to Honorable J. C. Draper, Director, Institute for Environmental Safety, University of Montevallo; February 7, 1969 to Honorable William C. Gullahorn, Jr., City Attorney, City of Albertville; and September 7, 1967 to Honorable B. R. Winstead, Jr., Director of Finance of the City of Birmingham, that the purchase of used equipment is subject to the competitive bid law. It is my opinion that it is not impossible for the City of Florence to purchase on a competitive bid basis a used copier of the same quality and specifications as the copier to which your request referred.

Therefore, you are advised that the contemplated purchase must be made on a competitive bid basis. I hope that this satisfactorily answers your question. If, however, this office can be of further assistance, please do not hesitate to call on us.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

June 21, 1978

Horace S. Merrill
Judge of Probate
Chairman, Cleburne County Commission
Post Office Box 27
Heflin, Alabama 36264

Elections—Cleburne County—Publication of List of Qualified Electors—Newspapers

Definition of what constitutes a newspaper having general circulation in the county discussed. Competitive bid laws applicable where there is more than one newspaper of general circulation in the county.

Opinion by Assistant Attorney General Middleton.

Dear Judge Merrill:

This office is in receipt of your letter of February 3, 1978 wherein you requested an opinion concerning which newspaper must publish the list of qualified electors in your county, i.e., the Cleburne News, a Cleburne County newspaper, or the Anniston Star, a Calhoun County newspaper. The answer to this question is as follows.

The law provides that an alphabetical list of qualified electors must be published by the probate judge in some newspaper with a general circulation in the county. Section 25, House Bill 426, 1978 Regular Session of the Alabama Legislature. In your letter, you stated that the Cleburne News, a local newspaper, has a circulation of 3,000 weekly, this including out of state and out of county subscribers, and that the Anniston Star has a circulation, in Cleburne County, of 1,200 daily. This office has previously rendered an opinion which dealt with the definition of a newspaper with a general circulation in the county. Volume 138, Quarterly Report of Attorney General, p. 36, a copy of which is enclosed. That opinion offers guidelines in making a determination as to what constitutes a newspaper of general circulation in the county. In any event, it is a question of fact which must be resolved at the local level by the probate judge.

However, the problem does not end there. In the same opinion

referred to above, this office wrote that a contract for services to publish a list of qualified electors, as required by law, must be awarded by competitive bid. Since that opinion state law has been amended to allow for a $2,000 exemption from the competitive bid law. (§41-16-50. **Code of Alabama,** 1975, as amended.) Consequently, if it is decided that both newspapers are ones of general circulation in the county, and the cost of publishing the list is more than $2,000, the competitive bid process will determine which one publishes the list. Of course, if it is decided that only one of the newspapers is one of general circulation in the county, or if the cost of publication is less than $2,000 then the competitive bid law would have no field of operation.

I trust this satisfactorily answers your question. If not, do not hesitate to let me know.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

June 27, 1978

Honorable B. A. Adams, Jr.
Mayor
City of Oxford
Post Office Box 3383
Oxford, Alabama 36203

Municipal Corporations—Annexation

A municipal corporation may extend its limits to include territory in another county.

Opinion by Assistant Attorney General Smith.

Dear Mr. Adams:

This office is in receipt of your opinion request which presents the following factual situation:

> "A group of citizens in an area adjacent to the Oxford City limits has presented the city council with a petition asking the city to hold an annexation election for that area. However, the area lies in two counties, (Talladega and Calhoun)"

You ask whether this election can be called by the City of Oxford and decided with the area lying in two counties. Your question is to be answered in the affirmative.

The Code of Alabama 1975 contains no restriction which would prohibit the City of Oxford from annexing territory situated in two counties. Absent any local law, it is the opinion of this office that the

City of Oxford may, by following procedures set forth in the Code of Alabama 1975, annex territory located in two counties.

I hope that this satisfactorily answers your question. If, however, this office can be of further assistance to you please do not hesitate to call on us.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

INFORMAL OPINIONS

During the period April 1, 1978 through June 30, 1978, the Attorney General rendered the following informal opinions.

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Circuit Clerks—Absentee Ballots—Fees	Fred Huggins	May 3	144
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Circuit Clerks—Absentee Ballots	John B. Green	June 22	311
CITY CLERKS			
City Clerks—Municipalities	Bracey C. Hill	June 13	309
COAL SEVERANCE TAX			
Coal Severance Tax—Municipalities	Alton C. Hyche	Apr. 17	131
COLBERT COUNTY			
Highway Department—Gasoline Tax	Bruce Gargis	May 1	29
COLLEGES AND UNIVERSITIES			
Education—Conflict of Interest—Colleges and Universities	Wayne Teague	May 9	Education
COMPENSATION			
Salary adjustments—Butler County Officials	G. Calvin Steindorff	May 23	166
Cullman County Officials—Increased Compensation	Randall Shedd	May 18	145
Circuit Clerk—Compensation	Ruth Gasser	May 18	168
Tuscaloosa County Tax Assessor and	Robert H. Johnston	June 22	163

Subject	Addressee	Date	File
Collector—Cost of Living Raise			
Cost of Living Increase—Magistrates	Allen L. Tapley	Apr. 5	Court Mgt.
District Judge—Expense Allowance	Joe Gilliland	May 22	254
COMPETITIVE BID LAW			
Definition of newspaper having general circulation—Elections—Publication of Qualified Voters—Competitive Bid Law	Horace S. Merrill	June 21	370
Public Contracts—Competitive Bid Law	Arnold Teks	June 16	352
School Construction Contract—Competitive Bid Law	John Hollis Jackson, Jr.	Apr. 27	224
Competitive Bid Law—Counties Use State Contracts	Jerry Popwell	Apr. 3	225
School Construction Contract—Change Order	William H. McWhorter	June 23	253
Competitive Bid Law—Exception	Wade Baxley	May 9	130
CONDOMINIUMS			
Condominium Property—Public Streets	J. Wagner Finnell	May 1	238
CONFLICTS OF INTEREST			
City Police Officer—Also Be Coroner	William McIntyre	May 9	147
Deputy District Attorney—Also Be Special Assistant Attorney General	Joseph B. Brogden	June 9	183
Education—Conflict of Interest—Colleges and Universities	Wayne Teague	May 9	Education
Sanitation employee may not be appointed Mayor—Municipalities—Conflict of Interest	Jerry D. Lester	May 23	278
Municipalities—Conflicts of Interest	Curtis E. Davis	May 25	276

CONSTABLES			
Birmingham Regional Planning Commission—Candidate for Constable	Donald A. Moseley	Apr. 21	229
CONSTITUTIONALITY			
Ad Valorem—Code of Alabama 1975, §40-8-1(e) Unconstitutional	Willard S. Christenberry	June 20	305
Constitutionality—Antitrust Legislation	Ralph Armstrong	Apr. 5	126
CONSUMER			
Insurance—Consumer	Henry Henderson	May 8	275
CONTRACTS			
Public Contracts—Competitive Bid Law	Arnold Teks	June 16	352
School Construction Contract—	John Hollis Jackson, Jr.	Apr. 27	224
School Construction Contract—Change Order	William H. McWhorter	June 23	253
Chamber of Commerce—Municipalities	Charles E. Osborne	May 2	162
Municipality—Contract with State Funded Institution	Billy J. Blackmon	Apr. 17	164
Highway Department—Alabama Power Company Contract	Dan Turner	May 23	Highway
Alabama Building Corporation—Contracts	George C. Wallace	June 8	Governor's Office
Industrial Development Boards—Grants	Julian D. Butler	June 15	26
Municipal Franchise—Power to Revoke	Carl W. Griffin	May 15	189
Councilman Purchase Land from Town—Municipalities Contracts	Patrick H. Tate	May 23	123
CORONER			
City Police Officer—Also Be Coroner	William McIntyre	May 9	147
Effective Date of Salary Increase—Coroner	Walter J. Merrill	May 22	30

Subject	Addressee	Date	File
CORPORATIONS			
Banking Department—Banks and Banking —Corporations—Mergers	D. M. Mitchell	May 4	Banking Dept.
CORRECTIONS, BOARD OF			
Law Enforcement Officer—Moral Turpitude	Judson Locke	May 1	Bd. of Corrections
COSMETOLOGY, BOARD OF			
Cosmetology—Education	Billie K. Jehle	May 11	Cosmetology Board
COSTS AND FEES			
Costs and Fees—Sheriffs	Sylvester Anton	May 1	328
Youthful Offender Status—Court Costs	Allen L. Tapley	May 10	Court Mgt.
No Recording Fee—Federal Tax Liens	Gerald Hartley	May 18	241
Tax Assessors—Commissions	J. Clyde Fleming	May 17	171
Juvenile Court—Court Costs	Walter J. Merrill	May 29	30
COUNTIES			
Definition of newspaper having general circulation — Elections — Publication of Qualified Voters—Competitive Bid Law	Horace S. Merrill	June 21	370
Ad Valorem—Code of Alabama 1975, §40-8-1(e) Unconstitutional	Willard S. Christenberry	June 20	305
County Employee—Payment for Unused Vacation Time	Larry H. Kenner	Apr. 11	231
Competitive Bid Law—Counties Use State Contracts	Jerry Popwell	Apr. 3	225
Washington County—Historical Commis-	Joseph E. Johnston	May 25	245

sion			
County Commission—Prison Site Preparation	Walter J. Merrill	June 14	30
Water and Fire Protection—Board of Directors	Edward W. Enslen	May 9	59
Sheriff—Courthouse Grounds	James E. Farrior	May 18	235
County Employee—Candidate for State Democratic Executive Committee	Velma Hosey	June 27	192
Counties—Parks and Recreation	Randall Shedd	May 1	145
Salary Adjustments—Butler County Officials	G. Calvin Steindorff	May 23	166
Sale of Alcoholic Beverages—Houston County	Nathan Mathis	June 22	88
Collection of Fees in Condemnation Cases —Probate Judges—Fees	R. D. Martin	June 13	284
Municipality extend Corporate Limits into Another County—Annexation	B. A. Adams, Jr.	June 27	100
County May Not Terminate Benefits—Social Security	Edwin A. Strickland	Apr. 4	72
Use of Public Building by Non-Profit Organization—Paving of Parking Lots	James Record	June 13	41
Effective Date of Salary Increase—Coroner	Walter J. Merrill	May 22	30
COURTHOUSE			
Sheriff—Courthouse Grounds	James E. Farrior	May 18	235
COURT MANAGEMENT, DEPARTMENT OF			
Docket Fees—Non-Support Cases	Allen L. Tapley	Apr. 7	Court Mgt.

Subject	Addressee	Date	File
COURTS			
Youth Offender Records—Probation Officer	Delores N. Pritchett	May 9	228
Municipal Court—Police Jurisdiction	James Everett	Apr. 6	227
Municipal Judge—Bonds	William R. Willard, Jr.	May 11	236
Youthful Offender Status—Court Costs	Allen L. Tapley	May 10	Court Mgt.
CULLMAN COUNTY			
Cullman County Officials—Increased Compensation	Randall Shedd	May 18	145
Circuit Clerk—Compensation	Ruth Gasser	May 18	168
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DEKALB COUNTY			
DeKalb County—Ambulance	Patrick H. Tate	Apr. 3	123
DISTRICT ATTORNEY			
Retired State Trooper—Trial Coordinator	Ben C. Reeves	Apr. 27	139
Deputy District Attorney—Also Be Special Assistant Attorney General	James B. Brogden	June 9	183
DISTRICT COURTS			
Magistrates—Search Warrants	J. Mack Curtis	Apr. 11	149
DIVORCE			
Child Support—Age of Majority	Douglas Ghee	Apr. 28	140
DOCKET FEES			
Docket Fees—Non-Support Cases	Allen L. Tapley	Apr. 7	Court Mgt.

DOTHAN, CITY OF			
Dothan, City of—Annexation	James W. Grant, III	June 1	175
DUAL OFFICEHOLDING			
Dual Officeholding—ALEPA and County Civil Service Board	Robert H. Johnston	May 18	163
Deputy District Attorney—Also be Special Assistant Attorney General	Joseph B. Brogden	June 9	183
Boards of Education—Dual Officeholding	Lanny West	Apr. 21	136
City Police Officer—Also Be coroner	William McIntyre	May 9	147
— E —			
EDUCATION			
Education—Conflict of Interest—Colleges and Universities	Wayne Teague	May 9	Education
Cosmetology—Education	Billie K. Jehle	May 11	Cosmetology Board
Boards of Education—Funds	John E. Adams	June 29	338
ELECTIONS			
Public Employees—Election Campaign	W. Michael Thornton	June 8	179
School Board Member—Run for Tax Collector	Lance D. Grissett	June 8	181
Public Employee—Election Campaign	Edward Ozment	June 9	182
Secretary of State—Ballot Preparation	Agnes Baggett	June 16	Secretary of State
Deputy Sheriff—Leave of Absence	Buford H. Bedingfield	May 23	170
Probate Judge—Recall Election	T. Walter Oliver, Jr.	May 11	172
Birmingham Regional Planning Commission—Candidate for Constable	Donald A. Moseley	Apr. 21	229
Municipalities—Change of Government	Claud E. McCoy	May 18	243

Subject	Addressee	Date	File
Probate Judge—Unexpired	Delwood Flanagan	May 25	174
Definition of newspaper having general circulation — Elections — Publication of Qualified Voters—Competitive Bid Law	Horace S. Merrill	June 21	370
May not hold election with two years to abolish fire district—Legislation—Elections	Frank C. Ellis	June 30	117
ELMORE COUNTY			
Tax Assessor—Elmore County	Laverne C. Johnston	June 7	185
EMPLOYEES, EMPLOYERS, EMPLOYMENT			
County Employee—Candidate for State Democratic Executive Committee	Velma Hosey	June 27	192
County Employee—Payment for Unused Vacation Time	Larry H. Kenner	Apr. 11	231
Retirement Systems—TARCOG	Joe E. Ritch	Apr. 27	230
Law Enforcement Personnel—Bailiffs	Sonny Moore	June 2	247
Retroactive Pay Increases Not Permitted —Utility Boards	Charlotte M. Lowery	May 23	318
City Manager—Fire Chief—Police Chief—Authority	Mary E. Brooks	Apr. 17	132
Public Employees—Election Campaign	W. Michael Thornton	June 8	179
School Board Member—Run for Tax Collector	Lance D. Grissett	June 8	181
Public Employee—Election Campaign	Edward Ozment	June 9	182
Tax Assessor—Elmore County	Laverne C. Johnston	June 7	185
Deputy Sheriffs—Salary	E. Ted Taylor	June 7	190
Judgment—City May Pay	Vernon N. Schmitt	Apr. 10	138

Reduction in Retirement Benefits—Unconstitutional	C. J. Higginbotham	Apr. 12	135
State Employees—Mileage Allowance	Fred Zeigler	Apr. 25	Comptroller Office
ENVIRONMENTAL PROTECTION AGENCY			
Certain Agencies Classified As State Agencies—Planning and Development Commission	Harold W. Hopkins	June 27	319
EQUALIZATION, BOARD OF			
County Board of Equalization—Bribery	James G. Sasser	Apr. 10	157
Etowah Circuit Clerk—Expense Allowance	Delores N. Pritchett	Apr. 14	228
EXPENSES			
Travel Expenses—Commissioner	James S. Satterfield	Apr. 3	81
Expense Allowances—County Boards of Education	Dan C. Alexander	Apr. 4	156
State Employees—Mileage Allowance	Fred Zeigler	Apr. 25	Comptroller's Office
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FEES			
Collection of Fee in Condemnation Cases —Probate Judges—Fees	R. D. Martin	June 13	284
FILING TAX			
Contract of Sale—Mortgage Tax—Deed Tax	Bryan McAfee	Apr. 19	151
Industrial Development Board—Mortgage Tax	John H. Armstrong	Apr. 11	127

Subject	Addressee	Date	File
Transfer of Notes—Mortgage Privilege Tax—Filing Tax	R. J. Stembridge	Apr. 20	199
FIRE DISTRICTS			
May Not Hold Election With Two Years to Abolish Fire District—Legislation—Elections	Frank C. Ellis, Jr.	June 30	117
FIRE STATION			
Municipalities—Fire Station	Jack M. Brown	Apr. 11	232
FUNDS			
Boards of Education—Funds	John E. Adams	June 29	338
Commons Property—Football Stadium Construction	Robert W. Clemmons	Apr. 26	137
New School District—Entitled to Taxes Levied	Kern Silvey	May 1	141
Alabama Building Corporation—Contracts	George C. Wallace	June 8	Governor's Office
Board of Education—Funds	James L. Kornegay, Jr.	June 9	257
County Commission—Prison Site Preparation	Walter J. Merrill	June 14	30
Geological Survey Pay UAB from Research Funds—Geological Survey—Funds	Thomas J. Joiner	June 29	279
Retirement System—Funds	David G. Bronner	May 17	Retirement System
Municipal Library—Funds	J. Channell	May 31	246
Tuscaloosa County—Federal Grant	W. Hardy McCollum	May 18	244
Washington County—Historical Commission	Joseph E. Johnston	May 25	245

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GAMING AND LOTTERIES

Beer Allowed in Billiard Rooms—Alcoholic Beverages	Ronald G. Davenport	Apr. 6	306

GASOLINE FUND

Highway Department—Gasoline Tax	Bruce Gargis	May 1	29

GENERAL OFFICERS

Appointment Must Be Confirmed by State Senate—National Guard—Military	Henry B. Gray	Apr. 28	Military Dept.

GEOLOGICAL SURVEY

Geological Survey Pay UAB from Research Funds—Geological Survey—Funds	Thomas J. Joiner	June 29	279

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HEALTH DEPARTMENT

State Employees—Mileage Allowance	Fred Zeigler	Apr. 25	Comptroller's Office

HIGHWAY DEPARTMENT

Highway Department—Gasoline Tax	Bruce Gargis	May 1	29
Highway Department — Alabama Power Company Contract	Dan Turner	May 23	Highway Dept.

HISTORICAL COMMISSION

Historical Commission—Sell Property	W. Warner Floyd	Apr. 3	Historical Comm.
Washington County—Historical Commission	Joseph E. Johnston	May 25	245

Subject	Addressee	Date	File
HOSPITALS			
County Hospital Board—Malpractice Insurance	Alton L. Turner	June 7	60
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INDUSTRIAL DEVELOPMENT BOARDS			
Industrial Development Board—Mortgage Tax	John H. Armstrong	Apr. 11	127
Industral Development Boards—Grants	Julian D. Butler	June 15	26
INSURANCE			
State Employees—Insurance	Dorothy Hitchcock	May 8	152
State As Self-Insurer — Exempt from Health Insurance Contracts Tax	Dorothy Hitchcock	June 21	152
Insurance—Consumer	Henry Henderson	May 8	275
County Hospital Board—Malpractice Insurance	Alton L. Turner	June 7	60
INTERNAL REVENUE			
No Recording Fee—Federal Tax Liens	Gerald Hartley	May 18	241
—J—			
JEFFERSON COUNTY HISTORICAL COMMISSION			
Jefferson County Historical Commission —Tax Exempt	Ollie L. Blan, Jr.	May 9	237
JUDGES			
Magistrates—Search Warrants	J. Mack Curtis	Apr. 11	149
District Judge—Expense Allowance	Joe Gilliland	May 22	254

JUDICIAL ARTICLE			
District Judge—Expense Allowance	Joe Gilliland	May 22	254
JUVENILE COURT			
Juvenile Court—Court Costs	Walter J. Merrill	May 29	30
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LAW ENFORCEMENT			
Law Enforcement Officer—Moral Turpitude	Judson Locke	May 1	Bd. of Corrections
Taxation—Shelby County—Law Enforcement	George W. Roy	May 1	176
Emergency Vehicles—Red Lights	John Percy Oliver, II	May 30	177
LAW ENFORCEMENT PLANNING AGENCY			
Annual Training Session—Funds	Col. Meady L. Hilyer	May 3	Public Safety
Dual Officeholding—ALEPA and County Civil Service Board	Robert H. Johnston	May 18	163
LAWRENCE COUNTY			
Counties—Contribute to Municipal Water System	Richard I. Proctor	Apr. 25	233
LEGISLATION			
May Not Hold Election Within Two Years to Abolish Fire District—Legislation—Elections	Frank C. Ellis, Jr.	June 30	117
LEGISLATURE			
Constitutionality—Antitrust Legislation	Ralph Armstrong	Apr. 5	126
LIBRARIES			
Municipal Library—Funds	J. Channell	May 31	246

Subject	Addressee	Date	File
LICENSES			
Definition of bona fide club—Pool Tables —Licenses	David T. Hyde, Jr.	June 26	320
LIMESTONE COUNTY			
Probate Judge—Unexpired Term	Delwood Flanagan	May 25	174
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MAGISTRATES			
Cost of Living Increase—Magistrates	Allen L. Tapley	Apr. 5	Court Mgt.
MEDICAL SCHOLARSHIP AWARDS BOARD			
Medical Scholarships—Loans	Ronald E. Henderson	Apr. 27	146
MENTAL HEALTH DEPARTMENT			
Mental Health Board—Employees Salaries Public Record	Stephen T. Etheredge	Apr. 12	134
MERGERS			
Banking Department—Banks and Banking —Corporations—Mergers	D. M. Mitchell	May 4	Banking Dept.
MERIT SYSTEMS			
County Employee—Candidate for State Democratic Executive Committee	Velma Hosey	June 27	192
Public Employees—Election Campaign	W. Michael Thornton	June 8	179
MILITARY DEPARTMENT			
Appointment must be Confirmed by Senate—National Guard—Military	Henry G. Gray	Apr. 28	Military Dept.

MORAL TURPITUDE

County Board of Equalization—Bribery	James G. Sasser	Apr. 10	157
Law Enforcement Officer—Moral Turpitude	Judson Locke	May 1	Bd. of Corrections

MORTGAGES

Mortgage Tax—Foreclosure	Harry D'Olive	June 23	255
Transfer of Notes—Mortgage Privilege Tax—Filing Tax	R. J. Stembridge	Apr. 20	199

MOTOR VEHICLES

Emergency Vehicles—Red Lights	John Percy Oliver, II	May 30	177
Motor Vehicles—Ad Valorem Taxation	Jean B. Crane	Apr. 12	202
Motor Vehicles—License Tag Decals	Glenn M. Smitherman	May 18	239

MUNICIPAL CORPORATION

Municipality Extend Corporate Limits into Another County—Annexation	B. A. Adams, Jr.	June 27	100

MUNICIPALITIES

Municipality—Contract With State Funded Institution	Billy J. Blackmon	Apr. 17	164
Probate Judge—Recall Election	T. Walter Oliver, Jr.	May 11	172
Dothan, City of—Annexation	James W. Grant, III	June 1	175
Annexation Petition—Probate Judge	O. D. Alsobrook	May 1	186
City Council—Resolutions	John Katopodis	May 16	188
Municipal Franchise—Power to Revoke	Carl W. Griffin	May 15	189
Competitive Bid Law—Exception	Wade Baxley	May 9	130
City Council—Vacancy	Nina Miglionico	Apr. 3	121
Judgment—City May Pay	Vernon N. Schmitt	Apr. 10	138
Municipalities—Parks	Bob Ellis, Jr.	May 2	143

Subject	Addressee	Date	File
Zoning—Councilman Property Owner	James E. Hill, Jr.	May 17	158
Coal Severence Tax—Municipalities	Alton C. Hyche	Apr. 17	131
Industrial Development Board—Mortgage Tax	John H. Armstrong	Apr. 11	127
City Manager—Fire Chief—Police Chief —Authority	Mary E. Brooks	Apr. 17	132
Chamber of Commerce—Municipalities	Charles E. Osborne	May 2	162
Municipal Library—Funds	J. Channell	May 31	246
School Cafeteria—Private Fund Raising Event	Jerry Batts	May 30	242
Municipalities—Change of Government	Claud E. McCoy	May 18	243
Fire Code—Municipalities	Hugh Allen	June 23	32
Municipal Court—Police Jurisdiction	James Everett	Apr. 6	227
Water and Fire Protection Authority—Municipalities	Patrick H. Tate	May 25	123
Counties—Contribute to Municipal Water System	Richard I. Proctor	Apr. 25	233
Municipalities—Fire Station	Jack M. Brown	Apr. 11	232
Feeding of City Prisoners—County Jail	Wyatt Lewis	Apr. 6	226
Utility Board Members	Mixon Jones	June 22	248
Sanitation Employee May Not Be appointed Mayor—Municipalities—Conflicts of Interest	Jerry D. Lester	May 23	278
Relatives Prohibited from Doing Business with City—Municipalities—Conflicts of Interest	Curtis E. Davis	May 25	276
Councilman Purchase Land from Town—Municipalities—Contracts	Patrick H. Tate	May 23	123

Residency of Clerks in Cities of Less than 6,000—City Clerks	Bracey C. Hill	June 13	309
Municipal Ordinances—Rules of Judicial Administration—Traffic Infractions	G. William Noble	June 27	342
City can work on Private Roads if Reimbursed—Municipalities—Roads	Ronnie Rampey	May 12	337

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NATIONAL FIRE CODE

Fire Code—Municipalities	Hugh Allen	June 23	32

NATIONAL GUARD

Appointment must be confirmed by Senate—National Guard—Military	Henry B. Gray	Apr. 28	Military Dept.

NEPOTISM

Relatives Cannot Be Hired by Judge of Probate	Arthur C. Murray	June 27	321

NEWSPAPERS

Publication of List of Qualified Voters—Elections—Newspapers	Horace S. Merrill	June 21	300

NON-PROFIT ORGANIZATIONS

Use of Public Building by Non-Profit Organization—Paving of Parking Lots	James Record	June 13	41

NONSUPPORT

Docket Fees—Non Support Cases	Allen L. Tapley	Apr. 7	Court Mgt.

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OFFICERS AND OFFICES

Municipal Personnel Board—	Jesse R. Cheatham	May 9	159

Subject	Addressee	Date	File
Political Activities			
City Manager—Fire Chief—Police Chief—Authority	Mary E. Brooks	Apr. 17	132
Cullman County Officials—Increased Compensation	Randall Shedd	May 18	145
Deputy Sheriffs—Salary	E. Ted Taylor	June 7	190
Birmingham Regional Planning Commission—Candidate for Constable	Donald A. Moseley	Apr. 21	229
Municipalities—Change of Government	Claud E. McCoy	May 18	243
Sanitation Employees May Not Be Appointed Mayor—Municipalities—Conflicts of Interest	Jerry D. Lester	May 23	278
Councilman Purchase Land from Town—Municipalities—Contracts	Patrick H. Tate	May 23	123
OPINIONS OVERRULED OR MODIFIED			
Opinion to William Dillard April 12, 1978, regarding deposit of public funds revoked	William W. Dillard	June 31	Examiners of Public Accounts
ORDINANCES			
Resolutions—City Council	John Katopodis	May 16	188
Municipal Court—Police Jurisdiction	James Everett	Apr. 6	227
Municipal Ordinances—Rules of Judicial Administration—Traffic Infractions	G. William Noble	June 27	342
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PARDONS AND PAROLES, BOARD OF			
Youthful Offenders—Sentencing	William Chesser	May 24	Pardons & Paroles

PARKS			
Counties—Parks and Recreation	Randall Shedd	May 1	145
Municipalities—Parks	Bob Ellis, Jr.	May 2	143
PEACE OFFICERS STANDARDS AND TRAINING COMMISSION			
Law Enforcement Officer—Moral Turpitude	Judson Locke	May 1	Board of Corrections
PHENIX CITY, CITY OF			
Reduction in Retirement Benefits—Unconstitutional	G. J. Higginbotham	Apr. 12	135
PHYSICAL THERAPY, BOARD OF			
Physical Therapy Board—Local Act	Elizabeth L. Bostock	Apr. 3	Phys. Therapy Bd.
PLANNING AND DEVELOPMENT COMMISSION			
Certain Agencies Classified as State Agencies—Planning and Development Commission	Harold W. Hopkins	June 27	319
POLITICAL ACTIVITIES			
Municipal Personnel Board—Political Activity	Jesse R. Cheatham	May 9	159
County Employee—Candidate for State Democratic Executive Committee	Velma Hosey	June 27	192
POLYGRAPH EXAMINERS BOARD			
State Agencies Exempt from Sales Tax—Sales Tax	Cecil L. Johnston	June 14	Polygraph Exam. Bd.

Subject	Addressee	Date	File
POOL TABLES			
Definition of Bona Fide Club—Pool Tables—License	David T. Hyde, Jr.	June 26	320
PRISONS AND PRISONERS			
Feeding of City Prisoners—County Jail	Wyatt Lewis	Apr. 6	226
County Commission—Prison Site Preparation	Walter J. Merrill	June 14	30
PROBATE JUDGES			
Voter List—Public Record	John L. Moore	May 9	148
Probate Judge—Recall Election	T. Walter Oliver, Jr.	May 11	172
Probate Judge—Unexpired Term	Delwood Flanagan	May 25	174
Annexation Petition—Probate Judge	O. D. Alsobrook	May 1	184
Land Redemption Report—Probate Judge	Walker Hobbie	June 21	19
Voter List Publication—Morgan County	Bobby Day	June 22	47
Collection of Fee in Condemnation Cases—Probate Judges—Fees	R. D. Martin	June 13	284
Relatives Cannot Be Hired by Judge of Probate—Nepotism	Arthur C. Murray	June 27	321
PROBATION OFFICERS			
Youth Offender Records—Probation Officer	Delores N. Pritchett	May 9	228
PROPERTY			
Historical Commission—Sell Property	W. Warner Floyd	Apr. 3	Historical Comm.
Property Exemption—Blind	Darrell R. Hann	Apr. 7	169
Industrial Development Boards—Grants	Julian D. Butler	June 15	26

PUBLIC BUILDINGS			
Use of Public Building by Non-Profit Organization—Paving of Parking Lots	James Record	June 13	41
PUBLIC RECORDS			
Utility Board—Members	Mixon Jones	June 22	248
Poll Lists—Public Inspection	Marilyn Quarles	June 19	101
Voter List—Public Record	John L. Moore	May 9	148
Mental Health Board—Employees Salaries Public Record	Stephens T. Etheredge	Apr. 12	134
PUBLIC SAFETY DEPARTMENT			
Annual Training Session—Funds	Meady L. Hilyer	May 3	Public Safety
Retired State Trooper—Trial Coordinator	Ben C. Reeves	Apr. 27	139
Emergency Vehicles—Red Lights	John Percy Oliver, II	May 30	177
Annual Training Session—Funds	M. L. Hilyer	May 3	Public Safety
PUBLICATION			
Definition of newspaper having general circulation—Elections—Publication of Qualified Voters—Competitive Bid Law	Horace S. Merrill	June 21	370
PUBLICATION OF QUALIFIED VOTERS			
Publication of List of Qualified Voters—Elections—Newspapers	Horace S. Merrill	June 21	300
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REAL ESTATE COMMISSION			
Real Estate Commission Licensee—Advertising	Mary L. Goodwin	May 10	Real Estate Comm.
REDEMPTION OF LAND			
Land Redemption Report—Probate Judge	Walker Hobbie	June 21	19

Subject	Addressee	Date	File
RESIDENCY			
Residency of Clerks in Cities of Less than 6,000—City Clerks	Bracey C. Hill	June 13	309
RETIREMENT			
Retired State Troopers—Trial Coordinator	Ben C. Reeves	Apr. 27	139
Reduction in Retirement Benefits—Unconstitutional	G. J. Higginbotham	Apr. 12	135
RETIREMENT SYSTEMS			
Retirement System—Funds	David G. Bronner	May 17	Retirement Systems
Retirement Systems—TARCOG	Joe E. Ritch	Apr. 27	230
Battleship Commission	David G. Bronner	June 16	Retirement Systems
REVENUE DEPARTMENT			
Revenue Department—Addition to Building	Charles A. Boswell	Apr. 17	Revenue Dept.
Reappraisal Project—Funds	Charles A. Boswell	Apr. 5	Revenue Dept.
ROADS, HIGHWAYS AND BRIDGES			
Condominium Property—Public Streets	J. Wagner Finnell	May 1	238
City Can Work on Private Roads if Reimbursed—Municipalities—Roads	Ronnie Rampey	May 12	337
RULES OF JUDICIAL ADMINISTRATION			
Municipal Ordinances—Rules of Judicial Administration—Traffic Infractions	G. William Noble	June 27	342

SALARIES			
Circuit Clerk—Expense Allowance	Delores N. Pritchett	Apr. 14	228
County Employee—Payment for Unused Vacation Time	Larry H. Keener	Apr. 11	231
Effective Date of Salary Increase—Coroner	Walter J. Merrill	May 22	30
SALES TAX			
State Agencies Exempt from Sales Tax—Sales Tax	Cecil L. Johnston	June 14	Polygraph Exam. Bd.
SCHOOLS			
Commons Property—Football Stadium Construction	Robert W. Clemmons	Apr. 26	137
New School District—Entitled to Taxes Levied	Kern Silvey	May 1	141
Boards of Education—Assignment of Teachers	Richard Mace	May 26	167
School Cafeteria—Private Fund Raising Event	Jerry Batts	May 30	242
SEARCHES AND SEIZURES			
Magistrates—Search Warrants	J. Mack Curtia	Apr. 11	149
SECRETARY OF STATE			
Secretary of State—Ballot Preparation	Agnes Baggett	June 16	Secretary of State
SEPTIC TANKS			
Septic Tanks—Taxation	Wade H. Baxley	June 1	130

Subject	Addressee	Date	File
SHELBY COUNTY			
Taxation—Shelby County—Law Enforcement	George W. Roy	May 1	176
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